



## SECURITIES AND EXCHANGE COMMISSION

[SEC File No.270-666, OMB Control No. 3235-0725]

### Submission for OMB Review; Comment Request

Upon Written Request Copies Available From:

U.S. Securities and Exchange Commission

Office of FOIA Services

100 F Street NE

Washington, DC 20549-2736

Extension: OWMi Contract Standard for Contractor Workforce Inclusion

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) provided that certain agencies, including the Commission, establish an Office of Minority and Women Inclusion (OMWI).<sup>1</sup> Section 342(c)(2) of the Dodd-Frank Act requires the OMWI Director to include in the Commission’s procedures for evaluating contract proposals and hiring service providers a written statement that the contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

In addition, section 342(c)(3)(A) of the Dodd-Frank Act requires the OMWI Director to establish standards and procedures for determining whether an agency contractor or subcontractor “has failed to make a good faith effort to include minorities and women” in its

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<sup>1</sup> 12 U.S.C. 5452.

workforce. Section 342(c)(3)(B)(i) provides that if the OMWI Director determines that a contractor has failed to make good faith efforts, the Director shall recommend to the agency administrator that the contract be terminated. Upon receipt of such a recommendation, section 342(c)(3)(B)(ii) provides that the agency administrator may terminate the contract, make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor, or take other appropriate action. To implement the acquisition-specific requirements of Section 342(c) of the Dodd-Frank Act, the Commission adopted a Contract Standard for Contractor Workforce Inclusion (Contract Standard).

The Contract Standard, which is included in the Commission's solicitations and resulting contracts for services with a dollar value of \$100,000 or more, contains a "collection of information" within the meaning of the Paperwork Reduction Act. The Contract Standard requires that a Commission contractor provide documentation, upon request from the OMWI Director, to demonstrate that it has made good faith efforts to ensure the fair inclusion of minorities in its workforce and, as applicable, to demonstrate its covered subcontractors have made such good faith efforts. The documentation requested may include, but is not limited to: 1) the total number of employees in the contractor's workforce, and the number of employees by race, ethnicity, gender, and job title or EEO-1 job category (e.g., EEO-1 Report(s)); 2) a list of covered subcontract awards under the contract that includes the dollar amount of each subcontract, date of award, and the subcontractor's race, ethnicity, and/or gender ownership status; 3) the contractor's plan to ensure the fair inclusion of minorities and women in its workforce, including outreach efforts; and 4) for each covered subcontractor, the information requested in items 1 and 3 above. The OMWI Director will consider the information submitted in evaluating whether the contractor or subcontractor has complied with its obligations under the Contract Standard.

The information collection is mandatory.

Estimated number of respondents: Based on a review of the last two fiscal years since the most recent approval of this information collection, the Commission estimates that 175 contractors would be subject to the Contract Standard.<sup>2</sup> Approximately 102 of these contractors have 50 or more employees, while 73 have fewer than 50 employees.

Estimate of recordkeeping burden: The information collection under the Contract Standard imposes no new recordkeeping burden on the estimated 102 contractors that have 50 or more employees. Such contractors are generally subject to recordkeeping and reporting requirements under the regulations implementing Title VII of the Civil Rights Act<sup>3</sup> and Executive Order 11246 (“EO 11246”).<sup>4</sup> Their contracts and subcontracts must include the clause implementing EO 11246 -- FAR 52.222-26, Equal Opportunity. In addition, contractors that have 50 or more employees (and a contract or subcontract of \$50,000 or more) are required to maintain records on the race, ethnicity, gender, and EEO-1 job category of each employee under Department of Labor regulations implementing EO 11246.<sup>5</sup> The regulations implementing EO 11246 also require contractors that have 50 or more employees (and a contract or subcontract of \$50,000 or more) to demonstrate that they have made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results,<sup>6</sup> and to develop and maintain a written program, which describes the policies, practices, and procedures that the contractor uses to ensure that applicants and employees receive equal opportunities for employment and advancement.<sup>7</sup> In lieu of developing a separate plan for workforce inclusion, a contractor may submit its existing written program prescribed by the EO 11246 regulations as part of the documentation that demonstrates the contractor’s good faith efforts to ensure the fair

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<sup>2</sup> Unless otherwise specified, the term “contractors” refers to contractors and subcontractors.

<sup>3</sup> 42 U.S.C. 2000e, *et seq.*

<sup>4</sup> Executive Order 11246, 30 Fed. Reg. 12,319 (Sept. 24, 1965).

<sup>5</sup> See 41 CFR 60-1.7.

<sup>6</sup> See 41 CFR 60-2.17(c).

<sup>7</sup> See 41 CFR part 60-2.

inclusion of minorities and women in its workforce. Thus, approximately 102 contractors are already required to maintain the information that may be requested under the Contract Standard.

The estimated 73 contractors that employ fewer than 50 employees are required under the regulations implementing EO 11246 to maintain records showing the race, ethnicity and gender of each employee. We believe that these contractors also keep job title information during the normal course of business. However, contractors that have fewer than 50 employees may not have the written program prescribed by the EO 11246 regulations or similar plan that could be submitted as part of the documentation to demonstrate their good faith efforts to ensure the fair inclusion of women and minorities in their workforces. Accordingly, contractors with fewer than 50 employees may have to develop a plan to ensure workforce inclusion of minorities and women.

In order to estimate the burden on contractors associated with developing a plan for ensuring the inclusion of minorities and women in their workforces, we considered the burden estimates for developing the written programs required under the regulations implementing EO 11246.<sup>8</sup> Based on OMWI's review of the plans and other documentation submitted by contractors with fewer than 50 employees to demonstrate compliance with the Contract Standard, we believe such contractors would require approximately 25 percent of the hours that contractors of similar size spend on developing the written programs required under the EO 11246 regulations. Accordingly, we estimate that contractors would spend about 18 hours of employee resources to develop a plan for workforce inclusion of minorities and women. This one-time implementation burden annualized would be 438 hours. After the initial development,

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<sup>8</sup> According to the Supporting Statement for the OFCCP Recordkeeping and Requirements-Supply Service, OMB Control No. 1250-0003 ("Supporting Statement"), it takes approximately 73 burden hours for contractors with 1-100 employees to develop the initial written program required under the regulations implementing EO 11246. We understand the quantitative analyses prescribed by the Executive Order regulations at 41 CFR part 60-2 are a time-consuming aspect of the written program development. As there is no requirement to perform these types of quantitative analyses in connection with the plan for workforce inclusion of minorities and women under the Contract Standard, we believe the plan for workforce inclusion will take substantially fewer hours to develop. The Supporting Statement is available at [reginfo.gov](http://reginfo.gov).

we estimate that each contractor with fewer than 50 employees would spend approximately 8 hours each year updating and maintaining its plan for workforce inclusion of minorities and women. The Commission estimates that the annualized recurring burden associated with the information collection would be 365 hours. Thus, the Commission estimates the annual recordkeeping burden for such contractors would total 803 hours.

The Contract Standard requires contractors to maintain information about covered subcontractors' ownership status, workforce demographics, and workforce inclusion plans. Contractors would request this information from their covered subcontractors, who would have an obligation to keep workforce demographic data and maintain plans for workforce inclusion of minorities and women because the Contract Standard is included in their subcontracts. Based on data describing recent Commission subcontractor activity, we believe that few subcontractors will have subcontracts for services with a dollar value of \$100,000 or more under Commission service contracts.<sup>9</sup> These subcontractors may already be subject to similar recordkeeping requirements as principal contractors. Consequently, we believe that any additional requirements imposed on subcontractors would not significantly add to the burden estimates discussed above.

Estimate of Reporting Burden: With respect to the reporting burden, we estimate that it would take all contractors on average approximately one hour to retrieve and submit to the OMWI Director the documentation specified in the proposed Contract Standard. We expect to request documentation from up to 50 contractors each year and therefore we estimate the total annual reporting burden to be 50 hours.

On July 8, 2021, the Commission published a notice in the Federal Register (86 FR 36167) of its intention to request an extension of this currently approved collection of

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<sup>9</sup> A search of subcontract awards on the [usaspending.gov](http://usaspending.gov) website showed that three subcontractors in FY 2016 and six subcontractors in FY 2017 had subcontracts of \$100,000 or more. See data on subcontract awards available at <http://usaspending.gov>.

information, and allowed the public 60 days to submit comments. The Commission received no comments.

Written comments continue to be invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov*. This information collection can be found by selecting “Currently under 30-day Review – Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent to: (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA\_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 14, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*